IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/11/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.34001 of 2004

Rama Muthuramalingam
State Propaganda Committee Member
Thanthai Periyar Dravidar Kazhagam
No.31, Nagaraja Iyer Colony
South Fourth Street
Mannargudi, Tiruvarur District. .. Petitioner

-Vs-

1. The Deputy Superintendent of Police
Mannargudi, Tiruvarur District.

2. The Inspector of Police
Mannargudi P.S., Tiruvarur District. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S.Doraisamy
for M/s.V.Elangovan

For Respondents : Mr.S.Venkatesh
SPL.GP

:ORDER

The petitioner is a member of the State Propaganda Committee of the Thanthai Periyar Dravidar Kazhagam, a non-political party. The main object of the said organisation is to abolish the caste system in the country. The other objects are to eradicate caste abolition, superstitious belief as well as untouchability.

2. The petitioner, by his application dated 1.11.2004, sought permission of the second respondent to conduct a public meeting on 16.11.20 04 to propagate the principles of the petitioner Kazhagam at Panthaladi Kilpuram, Mannargudi. However, by proceedings dated 15.11.2004, the first respondent refused permission to the petitioner Kazhagam to conduct a public meeting at Panthaladi Kilpuram, Mannargudi on 16.11.2004, on the ground that it would

affect the law and order in the locality, as there are direct clashes between the members of the petitioner Kazhagam and other organisations in connection with the arrest of Sankaracharyar in an alleged murder case.

3. Aggrieved by the said proceedings dated 15.11.2004, the petitioner has preferred this writ petition for issue of a writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent dated 15.11.2004 in Na.Ka.No.206/Thu.Kaa.Na./ Mannai/04, to quash the same and to direct the respondents to permit the petitioner on behalf of his party, to conduct a public meeting at Panthaladi Kilpuram, Mannargudi, Tiruvarur District on 25.11.2004.

4. Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr. S.Venkatesh, learned Special Government Pleader, who takes notice on behalf of the respondents.

5. The right to hold a public meeting to propagate the object of the petitioner Kazhagam is protected under Articles 19(1)(a) and 19(1)(b) read with Article 25 of the Constitution of India, unless it is opposed to the National Security and Public Interest.

6. Article 19(1)(a) of the Constitution guarantees to all citizens freedom of speech and expression, but Article 19(2) provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 25(1) guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion, subject to order, morality and health and to the other provisions of Part III of the Constitution. The right to freedom of conscience and freely to profess, practise and propagate religion guaranteed by Article 25 is subject to (1) public order, morality and health; (2) other provisions of Part III of the Constitution; (3) any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; or (b) providing for social welfare and reform. Thus while on the one hand Article 25(1) itself expressly subjects the right guaranteed by it to public order, morality and health and to the other provisions of Part III, on the other hand, the State is also given the liberty to make a law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practise and to provide for social welfare and reform, even if such regulation, restriction or provision affects the right guaranteed by Article 25(1). Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to

give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do. Here again as mentioned in connection with Article 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental instruction. Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Article 25, as held by the Apex Court in Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615.

7. It is needless to mention that our country is the world's most heterogeneous society with a rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. We find "unity in diversity" in our cultures, languages and religions and that is how, secularism has come to be treated as a part of fundamental law under our Constitution and therefore, religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of a welfare State. If we test the impugned order within the above parameters, undoubtedly, the State is empowered to exercise its power while granting or refusing permission for the public meeting because any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote the well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the Vedas, Upanishads and Puranas were said to reveal to mankind seem to be: "Love others, serve others, help ever, hurt never" and " sarvae jana sukhino bhavantoo", as observed by the Apex Court in State of Karnataka v. Praveen Bhai Thogadia (Dr),(2004) 4 SCC 684.

8. In the instant case, the petitioner seeks permission to conduct public meeting to propagate their principles and of course, they are entitled to the same, exercising the constitutional right conferred under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. But, while doing so, they shall not be entitled to hurt the religious feeling of any third parties. In the case on hand, the authorities have refused permission to conduct the public meeting on the ground that it would affect the law and order in the locality, as there are direct clashes between the members of the petitioner Kazhagam and other organisations in connection with the arrest of Sankaracharyar in an alleged murder case. The said reason, of course, also deserves to be tested in the light of the principles relating to Articles 19(1)(a), 1 9(1)(b) and 19(2) read with Articles 25(1) and 25(2) of the Constitution of India, referred to above. It, therefore, follows that when the State, for refusing permission to conduct a public meeting to the

petitioner Kazhagam, wants to quote a reason that there is likelihood of offending public order as well as public peace and tranquility, the State is also bound to apply the same yardstick to other organisations, which object the arrest of Sankaracharyar and only then the rule of law could be maintained.

9. The right of the petitioner to conduct a public meeting to propagate their principles as guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution of India could be protected only by imposing a condition that they shall not speak about the arrest of Sankaracharyar in an alleged murder case; nor justify the same; nor speak with reference to the investigation connected therewith. The respondents shall apply the same yardstick against those organisations, which indulge themselves in any manner objecting the arrest of Sankaracharyar in an alleged murder case, either opposing or criticizing the investigation connected therewith placing reliance on Article 25 of the Constitution of India, inasmuch as the beauty of Indian democracy lies in the face of secularism and any wrinkle on the secularism would deface the beauty of Indian democracy globally.

10. In that view of the matter, suffice it to permit the petitioner to approach the competent authority seeking permission to conduct a public meeting to propagate their principles notifying the date and venue and on receipt of such application, the competent authority shall pass appropriate orders within three days from the date of receipt of the said application, on condition that the petitioner Kazhagam shall neither create any law and order problem in that locality; nor affect the public peace and tranquility; nor speak about the arrest of Sankaracharyar in an alleged murder case; nor justify the same; nor speak with reference to the investigation connected therewith, or any other conditions as they may deem it fit and necessary to maintain law and order.

This writ petition is ordered accordingly. No costs. Consequently, W.P.M.P.No.41113 of 2004 is closed.

Index : Yes

Internet: Yes

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To:

1. The Deputy Superintendent of Police
Mannargudi, Tiruvarur District.

2. The Inspector of Police
Mannargudi P.S., Tiruvarur District.
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